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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE *et al*

Plaintiffs,

v.

WILBUR L. ROSS *et al*,

Defendants.

No. 5:20-cv-05799-LHK

**NOTICE OF MOTION AND MOTION TO
SHORTEN TIME AND TO EXPEDITE
BY STATES OF LOUISIANA AND
MISSISSIPPI**

Judge: Hon. Lucy H. Koh
Location: San Jose Courthouse, Courtroom 8

Action Filed: Aug. 18, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Local Rule 6-3, the States of Louisiana and Mississippi (collectively, “State Intervenor”) respectfully move to shorten the response time to their Motion to Intervene (ECF 204) to make any opposition due no later than 5 p.m. on September 24, 2020. State Intervenor further request that the Court rule on their Motion to Intervene promptly thereafter. In support thereof, the State Intervenor state:

1. Louisiana and Mississippi are sovereign States that have significant protectable interests in connection with the census, including the size of their Congressional delegations, proportionate allocation of limited federal resources, and the Equal Protection rights of their citizens.

2. On September 5, 2020, the Court granted Plaintiffs’ motion for a temporary restraining order until a September 17, 2020, hearing on Plaintiffs’ motion for a preliminary injunction. Order (ECF 84) (“TRO”). That TRO enjoined the federal defendants from implementing their current plan for the census, *id.* at 6-7, which would have reallocated Census Bureau resources to jurisdictions like Louisiana and Mississippi that are lagging in enumeration, then ceased data collection on or about September 30, 2020, *see* Fontenot Decl. (ECF 81-1) ¶¶ 95-97, 100; St. John Decl. Exhs. 10, 12, & 13 (ECF 204-11, 204-13, 204-14).

3. If census data collection is extended beyond September 30, “the Census Bureau would be unable to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior to April 1, 2021.” (ECF 81-1) at ¶ 100. Like other states, Louisiana and Mississippi would suffer additional harms from that delay as their own redistricting and reapportionment procedures are delayed. A morass of litigation will likely follow.

4. Nevertheless, on September 17, this Court continued a previously-set preliminary injunction hearing to September 22, 2020, and extended its TRO until “until the Court issues its decision on the preliminary injunction motion or through September 24, 2020, whichever is sooner.” Order (ECF 142) (“TRO Extension”) at 3. The TRO Extension also made clear that the federal Defendants were not adequately representing the Intervenor States’ interests in prompt resolution of this case. *See id.* at 13-17.

5. The Louisiana Attorney General's Office first learned of this litigation, the TRO, and the TRO Extension on the afternoon of September 17, 2020. *See* St. John Decl. ¶ 1.

6. Louisiana believed it needed to intervene to protect its interests, but recognized that drafting a Proposed Answer to Plaintiffs' 370 paragraph Amended Complaint, as required by Fed. R. Civ. P. 24, would require significant time. St. John Decl. ¶ 2. Louisiana accordingly retained local counsel and appeared on September 17, 2020, Notice of Appearance (ECF 144), then filed a Notice of Intent to Intervene (ECF 146) ("Notice of Intent") on the morning of September 18, *i.e.*, less than 24 hours after the Court entered the TRO Extension. The Notice of Intent identified in general terms Louisiana's interests, the harms this litigation poses to those interests, and Louisiana's intent to intervene.

7. During the September 22, 2020, preliminary injunction hearing, the Court stated it intended to rule on Plaintiffs' motion for a preliminary injunction within 24 to 48 hours. The Court expressly noted the likelihood of expedited appellate proceedings.

8. After the preliminary injunction hearing, counsel for Louisiana emailed counsel for the parties:

As previously indicated, the State of Louisiana, potentially joined by other States, intends to intervene in the above-captioned matter. In view of the district court's stated intent to issue a ruling within 48 hours, Louisiana contemplates filing its motion tomorrow morning. Louisiana will also move for expedited action and – to the extent any party opposes – a shortened response time of 24 hours. Please let me know your position by 08:00 a.m. Central tomorrow, September 23, 2020.

St. John Decl. Exh. 1.

9. Counsel for Defendants responded at 7:40 a.m. Central Time:

Defendants consent, but respectfully urge the Court not to delay resolution of Plaintiffs' motion for a preliminary injunction.

St. John Decl. Exh. 1.

10. Counsel for Plaintiffs delayed responding until 10:45 a.m. Central Time, and they demanded wholly irrelevant information such as "who at the Louisiana Governor's office you've been in touch with, along with those folks at other states you have reached out to" before meeting and conferring. St. John Decl. Exh. 1. Counsel for Plaintiffs did not provide a position on Louisiana's contemplated motions. *See id.*

11. Thereafter, Louisiana, joined by Mississippi, moved to intervene at approximately noon Pacific Time on September 23, 2020. Motion to Intervene (ECF 204).

12. Counsel for Louisiana then again emailed counsel for Plaintiffs seeking their position on a motion to shorten response time and to expedite, and offered to meet-and-confer via telephone. St. John Decl. Exh. 1. Plaintiffs did not respond. St. John Decl. ¶ 5.

13. As detailed in State Intervenor's Motion to Intervene and under Plaintiffs' allegations, State Intervenor's have been and are being irreparably harmed by the TRO and TRO Extension because Census Bureau resources are being diverted to other jurisdictions, despite the lagging enumeration in Louisiana and Mississippi and their significant hard-to-count populations. State Intervenor's will be further harmed by any preliminary injunction.

14. Although intervention at the appellate stage is permissible, the standard is demanding. *See, e.g., Peruta v. Cnty. of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc); *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). State Intervenor's seek a shortened response time and expedited resolution of their Motion to Intervene to ensure they can participate in the expedited appellate proceedings that this Court noted are likely to follow any preliminary injunction.

15. State Intervenor's have not previously requested any time modifications in this case. The requested time modification should not have any effect on other aspects of this case.

CONCLUSION

Federal Courts have recognized the interest of States in the census and have accordingly permitted States to intervene in disputes over the census. *See, e.g., Utah v. Evans*, 536 U.S. 452, 459 (2002). To ensure that Louisiana and Mississippi can protect their interests and participate in any expedited appellate proceedings, they respectfully request that this Court make any response to their Motion to Intervene due no later than 5 p.m. Pacific Time on September 24, 2020, and rule on that motion promptly thereafter.

1 Dated: September 23, 2020

Respectfully submitted,

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3 /s/ Bradley A. Benbrook

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